

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Division of Alcoholic Beverage Control Rules

Changes in Facts; Application; Rules of General Application; Relaxation;

Changes in Facts; Application; Refund of fees; Rules of General Application:

Relaxation; Licensee Qualification; Possession and Control of Licensed Premise;

Withdrawal of Application by Applicant; Increased License Fee for 2003-2004

License Term; Restrictions on Permittee; Suspension or Revocation of Solicitor's

Permit; Commencement of Disciplinary Proceedings; Penalty Schedule, Definition

of Violation, Successive Violations; Offers in Compromise of Suspension;

Increase or Decrease of Penalties; Eligibility for Transit Insignia, Special Transit

Insignia or Transportation License Insignia; Application; Fees; Term of Transit

Insignia, Special Transit Insignia or Transportation License Insignia, Renewal;

Location of Transit Insignia, Special Transit Insignia or Transportation License

Insignia; Limited Transportation Permit; Prohibition Against Immoral Activities;

Disturbance; Nuisance on Premises; Prohibition Against Lottery and Gambling;

Exceptions; Maintaining Copies of the Current License Certificate; Application;

List of Employees; Responsibility of Licensee for Employee Conduct; Prohibition

Against Hindering an Investigation; Books of Account; Dishonored Checks,

Unpaid fees; Advertising and Consumer Protection; Confidential Records;

Licensee Records; Storage Systems and Availability of Records; License Fees;

Multiple Barrooms; Package Goods Sales Restricted to the Bona Fide Principal
Barroom; Definitions.

Proposed New Rules: N.J.A.C. 13:2-9; 16.17, 23.33, and 44.1.

Proposed Amendments: N.J.A.C. 13:2-1.7, 2.14, 4.8, 16.11, 19.1, 19.11, 19.12,
19.13, 20.5, 20.6, 20.7, 20.8, 21.4, 23.6, 23.7, 23.13, 23.28, 23.30, 23.32,
24.10, 29.2, 29.4, 34.2, and 35.5.

Proposed Repeal: N.J.A.C. 13:2-1.9

Authorized By: Jerry Fischer, Director, Division of Alcoholic Beverage Control

Authority: N.J.S.A. 33:1-31, et seq.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2004-364

Submit comments by November 19, 2004 to:

Jerry Fischer, Director

Division of Alcoholic Beverage Control

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The agency proposal follows:

Summary

The Division of Alcoholic Beverage Control (Division) is proposing new rules, amendment of existing rules, and the repeal of an existing rule, which pertain to the administrative requirements of the Alcoholic Beverage Control Act and/or the rules of the Division. The proposed new rules, amendments and repeal are intended to clarify the Division's requirements for licensees in reporting and maintaining information for review by the Division. The Division's proposal also clarifies certain responsibilities of each licensee for operating its business within the parameters of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Furthermore, these proposed rule amendments correct technical errors and omissions in the Division's fee regulations.

The Division proposes to amend existing rule N.J.A.C. 13:2-1.7 to require corporate licensees with a State-issued license to file with the Director any corporate stockholder change resulting in any person acquiring one percent or more of its stock, not later than 10 days after the occurrence.

The Division proposes to repeal the current N.J.A.C. 13:2-1.9 and the subject matter of this rule is proposed to be recodified in new Subchapter 9, Rules of General Application and at N.J.A.C. 13:2-23.33.

The Division proposes to amend existing rule N.J.A.C. 13:2-2.14 to require licensees with a municipally-issued license to file with the municipal issuing authority any corporate stockholder change resulting in any person acquiring one percent or more of its stock, not later than 10 days after the occurrence.

The Division proposes to amend existing rule N.J.A.C. 13:2-4.8 to clarify that if an application for transfer is denied or withdrawn, the 10 percent of the full annual fee deposited with the municipality shall be retained by the municipality. The \$50.00 fee to the State of New Jersey shall be retained by the State.

Proposed new rule N.J.A.C. 13:2-9.1 is a recodification of the current N.J.A.C. 13:2-1.9(a) without change. This rule provides that the rules of this chapter may be relaxed by the Director upon a showing of undue hardship, economic or otherwise and that the waiver of the rule would not unduly burden any affected parties and is consistent with the underlying purposes of Title 33 and the implementing regulations.

Proposed new rule N.J.A.C. 13:2-9.2 specifies the requirements for qualification as an alcoholic beverage licensee. These include: (1) being at least 18 years of age; (2) not being convicted of a crime involving moral turpitude, unless this disqualification is removed pursuant to an Order by the Director; (3) not being a law enforcement officer whose duties include enforcing the Alcoholic

Beverage Control Act; (4) not having an interest in any manufacturer or wholesaler of alcoholic beverages and not being employed as a solicitor under this Act; (5) not having an interest in any alcoholic beverage license or permit which has been revoked within the past two years; (6) not having an interest in more than two retail licenses unless covered by an exception; and (7) being a corporation, partnership or other legal entity in good standing, if not an individual.

Proposed new rule N.J.A.C. 13:2-9.3 requires that each alcoholic beverage licensee must have and maintain a continuing possessory interest and exclusive control over the licensed premises.

Proposed new rule N.J.A.C. 13:2-9.4 provides that the refusal of an applicant for an alcoholic beverage license to submit to fingerprinting when so required by the Director or the local issuing authority, shall constitute a withdrawal of that application. Similarly, this proposed new rule provides that if an applicant for an alcoholic beverage license refuses to submit full disclosure in a financial investigation, that refusal shall also constitute a withdrawal of the application.

Proposed new rule N.J.A.C. 13:2-9.5 is a relocation of N.J.A.C. 13:2-1.9(e) without change.

The Division proposes to amend current rule N.J.A.C. 13:2-16.11, which

enumerates certain restrictions as to solicitor's permits, to reflect gender-neutral language.

Proposed new rule N.J.A.C. 13:2-16.17 states that if a solicitor holds more than one solicitor's permit and one of those permits is suspended or revoked, all of that solicitor's permits shall also be suspended or revoked, unless the solicitor demonstrates good cause why the other permits should not be suspended or revoked.

The Division proposes to amend current rule N.J.A.C. 13:2-19.1, which sets out the procedures regarding the commencement of disciplinary procedures against alcoholic beverage licensees for violations of the Act, with regard to the service of charges on the licensee. Specifically, the proposed amendment eliminates service by publication and provides that service of disciplinary charges may be made in person, by certified mail, return receipt requested or by ordinary mail. This provision mirrors the methods specified by the Office of Administrative Law in N.J.A.C. 1-1:7.1(a). Service shall be made upon the agent designated to accept service on the most recent license application or amendment thereto and such service shall be made using the address shown for that individual on the most recent license application or amendment thereto. N.J.A.C. 13:2-19.1(d) is amended to provide that service by mail shall be complete upon mailing.

Proposed N.J.A.C. 13:2-19.1(e) provides that service shall be deemed proper and complete if the Division certifies the date of mailing, modes of service conforming with this rule, and that the mailing was to the last known address as set forth by the licensee in its last-filed license renewal application or amendment thereto.

The Division proposes to amend current rule N.J.A.C. 13:2-19.11, which sets out the penalty schedule and the definition of violation and successive violation. Subsection (f) is proposed to be amended to clarify that the penalty for successive violations shall generally be calculated based upon the number of violations occurring within a two-year period from the date of disposition of any prior violation. Presently the rule provides that this calculation be based on the date of the first violation, which is usually earlier than the date of the disposition of the violation. The proposal amends subsection (g) to eliminate the phrase “in writing” from the first sentence, since written notice is included in the following sentence, making the phrase redundant, and other reasonable forms of notice may also be acceptable.

The Division proposes to amend current N.J.A.C. 13:2-19.11(i), which sets out the penalty schedule for the most common violations of the Alcoholic Beverage Control Act. This subsection is proposed to be amended to clarify several charges and add a penalty schedule for several new charges. The citations

for violations of ADV1 and ADV2 would be changed to make them consistent with the rule amendment. The description of the BOOKS1 and BOOKS2 charges would be amended from “books” to records to clarify that records of account not necessarily classified as books must be produced. The citation for a violation of CHECK would be changed to make it consistent with the rule change. The Division proposes to add penalty schedule for charges CRED1 and CRED2, based upon N.J.A.C. 13:2-24.4. This would provide a 15-day suspension for the first violation; a 30 day suspension for the second violation and a 45-day suspension for the third violation. The charge designated as E-141 is proposed to be changed to E-141-A1 and a new charge, E-141-A2, to be added based on N.J.A.C. 13:2-23.13(a)3. This new charge would impose a suspension if a licensee’s employees list is not complete or available on the licensed premises and there is a criminally disqualified employee. The penalty for the E-141-A2 charge proposed to be a 15-day suspension for the first violation; a 30 day suspension for the second charge and a 45 day suspension for the third violation. This charge is proposed to impose an enhanced penalty for a licensee's failure to make minimal inquiry into an employee's criminal history, resulting in the employment of a criminally disqualified person. The Division proposes to change the citation for a violation of EPOL2. The Division proposes to amend charges for gambling, GAMB1 and

GAMB2, to reflect the appropriate rule citation and the charge for GAMB5 would be amended by changing the terms “slot machine or other gambling device” to “device”. Two new penalty schedules are proposed to be added for gambling charges. The charge GAMB7C would be based on non-criminal gambling activity on the licensed premises involving an employee as set out in N.J.A.C. 13:2-23.7. The penalties for this charge are proposed to be 10 days suspension for the first violation; 20-day suspension for the second violation; 30-day suspension for the third violation and revocation upon the fourth violation. The charge GAMB7D is based on non-criminal gambling activity on the licensed premises involving a licensee as set out in N.J.A.C. 13:2-23.7. The penalties for this charge are proposed to be 10 days suspension for the first violation; 20-day suspension for the second violation; 30-day suspension for the third violation and revocation upon the forth violation. The penalty schedule for the charges NUIS1 and NUIS2 are proposed to be amended to reflect the correct citation, N.J.A.C. 13:2-23.6(b). The Division proposes to add a new penalty schedule based upon N.J.A.C. 13:2-9.3. This charge, POSS, is proposed for the failure of a licensee to maintain continuing possession and exclusive control of the licensed premises. The proposed penalties for this charge would include an indefinite suspension until corrective action is verified by the Division plus a 10-day suspension for the first

violation; an indefinite suspension until corrective action is verified by the Division plus a 20-day suspension for a second violation; an indefinite suspension until corrective action is verified by the Division plus a 30-day suspension for a third violation and revocation for the fourth violation. The Division proposes to amend the penalty schedule for the charge TRANS to reflect an additional citation, N.J.A.C. 13:2-20.3.

The Division proposes to amend current N.J.A.C. 13:2-19.12(b) to recognize a Division policy regarding acceptance of monetary offers in compromise in certain Division prosecutions. This policy of not accepting monetary offers in compromise once a case is litigated is established in Div. of ABC v. Reflections, 9 N.J.A.R. 303 (1984).

The Division proposes to amend current rule N.J.A.C. 13:2-19.13, which provides for the increase or decrease of penalties, to add in a new subsection (e). This subsection states that in instances where a licensee fails to comply with a request for documents and/or testimony, the Director may indefinitely suspend the license until such time as the licensee complies, in addition to any other penalty for hindering an investigation.

The Division proposes to amend current rules N.J.A.C. 13:2-20.5, 20.6 and 20.7 to remove the designation “special transit insignia.” This change is made to

ensure that the regulations conform to current Division practice. The Division determined several years ago that there was no need to differentiate between transit insignias, which were issued to passenger vehicles, and “special transit insignias,” which were issued to commercial vehicles. The Division now issues transit insignias to all eligible vehicles.

The Division proposes to amend current rule N.J.A.C. 13:2-20.8 to remove the designation “special transit insignia” and to correctly describe the placement of a transit insignia on the driver’s side front bumper of a vehicle, and a transportation license insignia on the vehicle body exterior on the left or driver’s side.

The Division proposes to amend current N.J.A.C. 13:2-21.4(b) to correctly reflect the fee for a limited transportation permit. The regulation states that the fee is \$750.00 when the fee is actually \$500.00. In the previous fee regulations proposed at 35 N.J.R. 3707(a) and adopted at 35 N.J.R. 5427(a), this fee was incorrectly noted as \$750.00, however, the fee is \$500.00. This is a typographical error in the rule which the proposal is intended to correct.

The Division proposes to amend current rule N.J.A.C. 13:2-23.6 to clarify the prohibition of nuisances upon licensed premises. The proposed amendment deletes paragraph (a)3 and replaces it with subsection (b) for clarity. Proposed

subsection (b) provides that every licensee shall operate its business in an orderly and lawful fashion, so as not to constitute a nuisance. A licensee's responsibility under this subsection includes the conduct of the licensee, its employees and patrons, if such conduct is contrary to the public health, safety and welfare. The proposed amendment also clarifies the prohibition by changing the terms "in or upon" to "on or about" in subsection (a).

The Division proposes to amend current rule N.J.A.C. 13:2-23.7 to clarify the prohibition against lottery and gambling. The Division proposes to clarify paragraph (a)4 to include in the prohibition any slot machine "or any other gambling device." Two new paragraphs have been added in the proposal. Proposed paragraph (a)6 prohibits any video device, which resembles a game of cards, dice, roulette, or any other game of chance or crane device, which device has not been approved by the Director. In approving a device, the Director must be satisfied that the specific device is an entertainment device and not a gambling device. In reaching this determination, the Director shall consider all factors relating to the operation of the device, including, but not limited to, whether the device can easily be used for or adapted to gambling. A licensee wishing to place such a device on a licensed premises shall request written confirmation from the Director, prior to placement, that the specific device has been previously approved

or, if the specific device has not been previously approved, shall request that the Director make such a determination. The approval letter shall be kept on the licensed premises at all times or the device may be deemed to be unapproved.

Proposed paragraph (a)7 prohibits any raffle, drawing, lottery or contest, etc., the prize for which is an alcoholic beverage, without the appropriate permit.

Subsection (c), which is added in this proposed amendment, provides that all licensees which have approved video games on their licensed premises shall notify the Division within 48 hours of the placement thereof.

The Division proposes to amend current rule N.J.A.C. 13:2-23.13 to explicitly require licensees to maintain copies of their current license certificate, application and list of employees on the licensed premises. The rule currently implicitly requires the documents to be on the licensed premises, but has been misconstrued by some licensees to require only that these document be available for inspection. The proposed amendment, however, provides for an exception for retail licensed premises which obtain a Permit for Off-Premises Storage of Business Records. Additionally, the proposed amendment clarifies that a licensee shall be deemed to have complied with this requirement as to the employee list if this information is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced. The proposed

amendment relocates subsection (c) as part of paragraph (a)3.

The Division proposes to amend and change the heading of current rule N.J.A.C. 13:2-23.28. The current heading for this rule is “Responsibility of licensee for employee conduct.” The proposed heading for this section, “Standard of liability,” more clearly defines the scope of the rule. The proposed amendment includes several new provisions. As provided in the proposed amendment, unless otherwise specified by statute or rule, a licensee is guilty of a violation of the Alcoholic Beverage Control Act if it allows, permits or suffers the violative act on or about its licensed premises. The proposed amendment further provides that when knowledge is required to establish a violation of the Alcoholic Beverage Control Act, knowledge is established if: (1) the licensee itself committed the violative act; (2) the licensee had actual knowledge or was on notice that the violative activity was taking place, or about to take place, on or about the licensed premises; or (3) the licensee could have discovered violative activity was taking place, or about to take place, on or about the licensed premises through reasonable inquiry and had notice of circumstances which gave rise to a duty to inquire regarding same. The rule currently states that, in disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent,

servant, employee or patron or the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given by him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings. Furthermore, the proposed amendment of subsection (d) states that no licensee shall commit any act which gives rise to a violation which is chargeable against any other licensee. The licensee committing such violation may be administratively charged for same even if the other licensee is not charged. The proposed amendment of subsection (e) clarifies that the provisions of this regulation apply to all classes of alcoholic beverage licenses.

The Division proposes to amend current rule N.J.A.C. 13:2-23.30 which prohibits hindering an investigation. The Division proposes to amend the rule at subsection (c) to provide that every licensee and every person with an ownership interest therein and every director, officer, agent and employee of every licensee shall accept service of any subpoena issued by the Director. If service of a subpoena cannot be made due to the refusal of the licensee or any such person identified above to accept service of same, the licensee may be considered in violation of the Alcoholic Beverage Control Act. Additionally, the proposed amendment at subsection (d) provides that no licensee, permittee or any

shareholder, partner or other person having an interest in a license or permit shall refuse to submit to fingerprinting when so required by the Director or the local issuing authority. Furthermore, the proposed amended rule at subsection (e) states that no licensee, permittee or any shareholder, partner or other person having an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself or another person or entity), when so required by the Director or the local issuing authority.

The Division proposes to amend and change the heading to current rule N.J.A.C. 13:2-23.32. The current heading for this rule is “Books of account.” The proposed heading for this section, “Records to be maintained on the licensed premises; other required records,” more clearly defines the scope of the rule. This section provides that unless a licensee has obtained a permit for the off-premises storage of certain records, pursuant to N.J.A.C. 13:2-29.4, each licensee must keep and maintain the following documents and records on its licensed premises: (1) the current license certificate; (2) a copy of the current license application with any amendments filed, if applicable, together with a copy of the last long-form retail licensee application filed by the licensee; (3) a fully completed up-to-date list of

all persons currently working on the licensed premises (commonly known as Form E-141-A); (4) the current Federal special tax stamp, or proof of proper filing for such annual stamp; (5) copies of all delivery slips, invoices or similar documents for such transactions made within the past year; (6) records of transactions with or placements by a registered display service; (7) New Jersey Sales Tax Certificate of Authority; and (8) any other records required by this subsection. Additionally, this proposed amendment of subsection (b) requires that all licensees maintain, for a period of five years, a record of all money or any other thing of value received in the ordinary course of business or received outside the ordinary course of business, including, but not limited to, liquor sales, food sales, rebates, including payments from any Retail Incentive Program “RIPs,” and miscellaneous income. Furthermore, as set forth in subsection (c), all licensees must maintain, for a period of five years, records which show the payment of all expenses. The records shall indicate the name of the person or entity receiving such payment, the amount of the payment and the reason that the payment was made. Payment records shall include payments made for: (1) the purchase of alcoholic beverages; (2) the purchase of food items; (3) the purchase of supplies and use of utilities; (4) the purchase or lease of equipment; (5) the payment of employees' compensation, including all required withholding; (6) the payment of all local, state and federal

taxes and license fees; (7) the payments of rents, mortgages, loans and/or a reduction of an owner's equity; and (8) all other disbursements.

This proposed amendment at N.J.A.C. 13:2-23.32(d) also requires that all licensees must produce the above-enumerated records for inspection immediately upon request by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p). Furthermore pursuant to subsection (e), all licensees must have and keep, for an unlimited period of time, permanent records of account which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments for an unlimited period of time. Such documents may be stored on or off the licensed premises and shall be produced within seven days of a request from by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer.

Proposed new rule, N.J.A.C. 13:2-23.33, Dishonored checks, unpaid fees , is a relocation of N.J.A.C. 13:2-1.9(d) without change in text.

The Division proposes to amend current rule N.J.A.C. 13:2-24.10, which

concerns advertising and consumer protection, to prohibit from advertisements, any material the substance of which is in violation of any other provision of the Alcoholic Beverage Control Act, if performed by a licensee.

The Division proposes to amend current rule N.J.A.C. 13:2-29.4, regarding licensee records; storage systems and availability of records, to provide that the Director may, in the sound exercise of his or her discretion, issue a permit for the off-premises storage of the records listed in N.J.A.C. 13:2-23.32(a)(5), (b) and (c) that are in excess of three months old. The amended rule at new subsection (e), also allows a licensee to apply to the Director for a Permit for Off-Premises Storage of Business Records on a form prescribed by the Director. The permit term shall coincide with the license term. A separate permit shall be obtained for each license held by the licensee. The cost of this permit shall be \$100.00 per license for each license term. The permit must be renewed at the same time the license is renewed.

Proposed new rule, N.J.A.C. 13:2-29.5, Inspection by other governmental agencies, provides that the Division may, in its sole discretion, provide to any governmental agency for inspection any document in the Division's possession.

The Division proposes to amend current rule N.J.A.C. 13:2-34.2 regarding the fee for a restricted brewery license to reflect the legislative change in P.L.

2003, c.117, which was enacted in July 2003. The base license fee has increased from \$1,000 to \$1,250. The additional fee for every additional 1,000 barrels has increased from \$500.00 to \$625.00. This change was omitted from the previous fee regulations proposed at 35 N.J.R. 3707(a) and adopted at 35 N.J.R. 5427 (a).

The Division proposes to amend current rule N.J.A.C. 13:2-35.5, which applies to multiple barrooms, to provide at new subsection (b) that every holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall designate the principal public barroom on its sketch of the licensed premises. For current licensees, this requirement shall become effective upon the filing of the first renewal application after the effective date of this new subsection. This designation shall be binding on the licensee, but not on the Division or other issuing authority.

This proposal also contains a new subchapter clarifying the definitions used in this chapter of the administrative rules, subchapter 44, Definitions. Proposed rule N.J.A.C. 13:2-44.1 provides that unless otherwise defined in these regulations, the definitions set forth in the Alcoholic Beverage Control Act, at N.J.S.A. 33:1-1, shall govern the meaning of terms in these regulations.

Definitions are also provided for: (1) "Alcoholic Beverage Control Act," which means N.J.S.A. 33:1-1, et seq., and the rules promulgated thereunder, at N.J.A.C. 13:2; (2) "employee" which means a person who performs services in connection with the operation of the licensed business. The term "employee" includes people who are included on the payroll of the licensee, persons who perform services on or about the licensed premises pursuant to a contract (independent contractor) and who are not included on the licensee's payroll, and even people who are not paid for their work or services, including, but not limited to, family members who may be temporarily operating the business while the owner is away from the premises; and (3) "Proceeding" which means any inspection or investigation conducted by the Division or any order to show cause, contested case or any other litigation in which the Division is a party related to matters involving the Alcoholic Beverage Control Act. The proposal also indicates that the terms "license" or "permit" are used interchangeably for disciplinary purposes. Thus, the use of either of these terms shall encompass the other.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules, amendments and repeal of an existing rule proposed by the Division pertain to the administrative requirements of the Alcoholic Beverage Control Act and/or the rules of the Division. The proposed new rules, amendments and repeal are intended to clarify the Division's requirements for licensees in reporting and maintaining information for review by the Division. The Division's proposal also clarifies certain responsibilities of each licensee for operating its business within the parameters of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Furthermore, these proposed rule amendments correct technical errors and omissions in the Division's fee regulations. The majority of these changes involve agency policies regarding disciplinary proceedings. By properly sanctioning persons who were engaged in activity contrary to the alcoholic beverage law, there is a positive social benefit for the industry and public at large. The knowledge that improper conduct of licensees or permittees will result in appropriate punishment is of significant interest both to the public at large and the law abiding members of the industry. All state and municipally issued liquor licenses are subject to the rules which also provides that appropriate sanctions cannot be avoided by changes in the license entity, location of the licensed premises, or by an extension or renewal of a

license. The rules enable the Division to enforce the legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq., to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State. Therefore, a positive social impact is realized by the adoption of these proposed new rules, amendments and repeal

Economic Impact

The proposed new rules, amendments and repeal included in this proposal are intended to clarify the Division's requirements for licensees in reporting and maintaining information for review by the Division. The Division's new rules, amendments and repeal also clarify certain responsibilities of each licensee for operating its business within the parameters of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Furthermore, these proposed rule amendments correct technical errors and omissions in the Division's fee regulations. The majority of the changes included in the new rules and amendments involve disciplinary sanctions for violators of the Alcoholic Beverage Control Act. The removal, either temporarily or permanently, of licensees who violate pertinent laws and rules, ultimately results in a beneficial economic impact upon the alcoholic beverage industry.

These proposed new rules, amendments and repeal impose an economic

impact upon the applicants for a State or municipal license or permit in the form of fee changes. The fees for a restricted brewery license have increased and the fee for a limited transportation permit is corrected in the rule to reflect its true amount, which is \$250.00 less than that reflected in the current rule. This Division anticipates no economic impact on the public at large. The proposed new rules, amendments and repeal are necessary and proper for the supervision of the alcoholic beverage industry.

There is a direct economic impact upon the Division for expenses that include scheduling and notice expenses, site expenses, instructional expenses and other related costs. The economic impact upon the Division and its enforcement arm, the ABC's Investigative Unit, will not be changed by the adoption of these new rules. Local law enforcement officials who review activities at licensed premises in their communities will continue to do so without any enhanced economic impact because of the adoption of these new rules. The adoption of these new rules represents the needed control and enforcement remedy to ensure, as best as possible, a uniform and strict compliance with the standards set forth in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq.

Federal Standard Statement

A Federal standards analysis is not required since the proposed new rules, the amended rules, and the rules proposed for recodification are dictated by, and in accordance with N.J.S.A. 33:1-1, et seq.; there are no applicable Federal requirements or standards.

Jobs Impact

The Division is not aware of any jobs that are likely to be generated or lost as a consequence of these new rules, amendments and repeal.

Agriculture Industry Impact

The proposed new rules, the amendments, and repeal will have no impact on the agricultural industry in this State.

Regulatory Flexibility Analysis

Most liquor licensees are small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The new rules, amendments and repeal are intended to clarify the Division's requirements for all licensees in reporting and maintaining information for review by the Division. The Division's proposal also clarifies certain responsibilities of each licensee for operating its business within the parameters of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq., These compliance requirements are delineated in the Summary

above and compliance costs are discussed in the Economic Impact above.

Specifically, with regard to recordkeeping, the new rules, amendments and repeal clarify that a licensee's current license certificate, application and list of employees must be maintained on the licensed premises. The proposed new rules, amendments and repeal also provide an exception for retail licensed premises which obtain a Permit for Off-Premises Storage of Business Records as delineated in the Summary above.

The Division anticipates that no other additional professional services will be required for compliance with the new rules and amendments. There is no distinction made for a small business licensee since the new rules and amendments impose compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the new rules and amendments, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this proposal are uniform, regardless of business size.

Smart Growth Impact

The proposed new rules and amendments and repeal will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:2-1.7 Changes in facts; application

(a) (No change)

(b) Corporate licensees shall file **with the Director** an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock **not later than 10 days after the occurrence**. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in partnerships and other types of legal entities shall be treated in the same manner as a stockholder change of a corporate licensee.

[13:2-1.9 Rules of general application; relaxation

(a) The rules of this chapter may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and, that the waiver is consistent with the underlying purposes of

Title 33 and the implementing regulations. Waiver requests must be submitted in writing to the Director and shall include all documentation which supports the applicant's request for a waiver.

(b) No licensee, permittee, applicant or any shareholder, partner or other person having or applying for an interest in a license or permit shall refuse to submit for fingerprinting when so required by the Director or the local issuing authority.

(c) No licensee, permittee, applicant or any shareholder, partner or other person having or applying for an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself or another person or entity) when so required by the Director or the local issuing authority.

(d) In the event that a check submitted by a licensee, permittee or applicant which is returned unpaid to the Director or other issuing authority, or all or any portion of any fee required is unpaid, the licensee, permittee or applicant shall be subject to disciplinary action or denial of current and future applications.

(e) Notwithstanding (d) above, any applicant for a license or license renewal who has submitted the license fee for an application for a license issued or transferred on or after July 1, 2003, or renewed for a license term commencing on or after July 1, 2003, shall submit immediately any outstanding portion of the total license fee as increased by P.L. 2003, c.117. If the increased portion of the license fee has not been paid in full by October 1, 2003, the applicant shall be deemed to be in violation of N.J.S.A. 33:1-27 and the Director may issue an ex parte order revoking the license or indefinitely suspending it until payment.]

13:2-2.14 Changes in facts; application

(a) (No change)

(b) Corporate licensees shall file **with the municipal issuing authority** an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock **not later than 10 days after the occurrence.** If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in partnerships and other types of legal entities shall be treated in the same manner as a stockholder change of a corporation licensee.

13:2-4.8 Refund of fees

(a) If the application for license issuance [or transfer] is denied for any reason whatsoever or withdrawn, a statutory refund of 90 percent of the fee deposited with the municipality shall be made by the municipality to the applicant. The remaining 10 percent shall be deemed an investigation and processing fee and shall be retained by the municipality. The \$50.00 State fee required to accompany the application shall be retained as a processing fee by the Director.

If an application for a renewal of license is denied, refund of fees shall be in accordance with N.J.A.C. 13:2-11.

(b) If an application for license transfer is denied or withdrawn, the 10 percent of the full annual fee deposited with the municipality shall be retained by the municipality.

The \$50.00 State fee required to accompany the application shall be retained as a processing fee by the Director.

SUBCHAPTER 9. [reserved] RULES OF GENERAL APPLICATION

13:2-9.1 Relaxation

The rules of this chapter may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and the implementing rules. Waiver requests must be submitted in writing to the Director and shall include all documentation which supports the applicant's request for a waiver.

13:2-9.2 Licensee qualification

(a) Each holder of an alcoholic beverage license, and each owner thereof, must continually meet the following qualifications:

1. At least 18 years of age;

2. Has not been convicted of a crime involving moral turpitude, unless the Director has removed said disqualification pursuant to N.J.A.C.

13:2-15;

3. Is not a law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act;

4. Does not have an interest in any manufacturer or wholesaler of alcoholic beverages and is not employed as a solicitor;

5. Has not had an interest in any alcoholic beverage license or permit which has been revoked within the past two years;

6. Does not have an interest in more than two retail licenses, unless covered by an exception; and

7. Is a corporation, partnership or other legal entity in good standing, if the licensee is other than an individual.

13:2-9.3 Possession and control of licensed premises

Each licensee must have and maintain a continuing possessory interest and exclusive control over the licensed premises.

13:2-9.4 Withdrawal of application by applicant

(a) No applicant or any shareholder, partner or other person applying for an interest in a license or permit shall refuse to submit to fingerprinting when so required by the Director or the local issuing authority. Such refusal shall constitute a withdrawal of the application.

(b) No applicant or any shareholder, partner or other person applying for an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself or another person or entity), when so required by the Director or the local issuing authority. Such refusal shall constitute a withdrawal of the application.

13:2-9.5 Increased license fee for 2003-2004 licensed term

Notwithstanding N.J.A.C. 13:2-23.33, any applicant for a license or license renewal who has submitted the license fee for an application for a license issued or transferred on or after July 1, 2003, or renewed for a license term commencing on or after July 1, 2003, shall submit immediately any outstanding portion of the total license fee as increased by P.L. 2003, c.117. If the increased portion of the license fee has not been paid in full by October 1, 2003, the applicant shall be deemed to be in violation of N.J.S.A. 33:1-27 and the Director may issue an ex parte order revoking the license or indefinitely suspending it until payment.

13:2-16.11 Restrictions on permittee

(a) (No change)

(b) No holder of a solicitor's permit shall directly or indirectly engage in any conduct prohibited its employer by the provision of Title 33 or any regulations promulgated thereunder, nor shall such person sell, solicit, or deliver alcoholic beverages at a price or upon terms or conditions or under promotions or contests not contained in [its employers] **his or her employer's** "Marketing Manual" and "Current Price List" kept pursuant to N.J.A.C. 13:2-24 for the operative period.

(c) - (e) (No change)

13:2-16.17 Suspension or revocation of solicitor's permit

If a solicitor holds more than one solicitor's permit and one of the solicitor's permits is suspended or revoked, all of the solicitor's permits shall be suspended or revoked unless the solicitor demonstrates good cause why the solicitor's other permits should not be suspended or revoked.

13:2-19.1 Commencement of disciplinary proceedings

(a) (No change)

(b) [Service shall be made in person or by certified mail, return receipt requested on any individual listed in (c) below. If the addressee refuses to claim or to accept delivery of certified mail, service shall be made by ordinary mail. If mail service is unsuccessful, then service shall be made by publication.] **Service shall be made in person; or by certified mail, return receipt requested; or by ordinary mail.**

(c) Service shall be made upon any of the following: the individual licensee, the agent designated to accept service on the most recent license application **or amendment thereto** or any officer, director, shareholder, member or partner of the licensee. If none of these individuals are available at the licensed premises, then service may be made on any employee. Mail service shall be made upon any individual listed above using the address that is shown for that individual on the most recent license application **or amendment thereto**. [Service by publication shall be made by publishing the Notice of Charges once in a newspaper published or of general circulation in the county in which the license is venued or which was the last known situs of the business.]

(d) [Service is complete upon receipt of personal service or acceptance of certified mail. If the addressee refuses to claim or accept delivery of certified mail, service is complete upon the mailing of ordinary mail. If service is made by publication, service is complete upon publication of the Notice of Charges.] **Service by mail shall be complete upon mailing.**

(e) If a certification of service of the charges is required, it shall be sufficient if the Division describes the date of mailing, the modes of service and that the mailing was to the last known address as set forth by the licensee in its last-filed license renewal application or amendment thereto.

13:2-19.11 Penalty schedule, definition of violation, successive violations

(a) - (e) (No change)

(f) The term "successive violations" means violations that occur outside of the same 24- hour period. The penalties for successive violations shall generally be calculated based upon the number of violations occurring within a two-year period from the date **of disposition** of [the first] **any prior** violation(s), subject to the provisions of (g) below. Notwithstanding the foregoing, the Director may, in the Director's sole discretion, consider aggravating or mitigating circumstances in determining the level of violation.

(g) The penalty for a second, third or fourth violation shall only be imposed if the licensee has been notified [in writing] of the prior violation or violations, before the additional violation is charged. Such notice may be provided by service of a Notice of Charges or the receipt of a written notice from an investigating officer that a violation has occurred, which may be presented to the licensee or other employee at the licensed premises, or other reasonable form

of notice. Notwithstanding the foregoing, if violations are discovered during an undercover operation, then no notice of any prior violation is necessary to impose the penalty for a second, third or fourth violation.

(h) (No change)

Statute, Regulation or Bulletin Item	Code	Description	First Violation	Second Violation	Third Violation	Fourth Violation
...
N.J.A.C. 13:2-24.10(a)1-[6] <u>7</u>	ADV1	Improper advertising	5	10	20	...
N.J.A.C. 13:2-24.10(a) <u>7</u> <u>8</u>	ADV2	Improper cooperative advertising	5	10	20	...
...
N.J.A.C. 13:2-23.32(a), (b) and (c), 24.1(c) and (e)	BOOKS1	Failure to have true [book or books] record or records of account available on the licensed premises, but produced within 7 business days of demand	[1] <u>2</u>	[5] <u>10</u>	[10] <u>20</u>	...
N.J.A.C. 13:2-23.32(a), (b), (c) and (d), 24.1(c) and (e)	BOOKS2	Failure to maintain true [books or books] record or records of account or failure to produce true [books or books] record or records of account within 7 business days of demand	30	60	Revocation	...
...
N.J.A.C. 13:2-[1.9(d)] <u>23.33</u>	CHECK	Return of an unpaid check to Division or issuing authority (penalties will include original check amount and administrative costs)	5	10	20	...
...
N.J.A.C. 13:2-24.4	CRED1	Wholesaler extended credit to retailer on COD status	<u>15</u>	<u>30</u>	<u>45</u>	...
N.J.A.C. 13:2-24.4	CRED2	Retailer received credit from wholesaler while on COD status	<u>15</u>	<u>30</u>	<u>45</u>	...

...
N.J.A.C. 13:2-23.13(a)3	[E141] E-141-A1	Employees list not complete or available on the licensed premises	1	5	10		
<u>N.J.A.C. 13:2-23.13(a)3</u>		<u>Employees list not complete or available on the licensed premises and criminally disqualified employee</u>	15	30	45		
...		
[N.J.A.C. 13:2-23.31(b)2ii] <u>N.J.S.A. 33:1-26.1</u>	EPOL2	Employed a law enforcement officer in jurisdiction where law enforcement officer serves	15	30	45	Revocation	
...
[Bull. 2430, Item 3 / Bull. 2437, Item 4] <u>N.J.S.A. 2A:40-1;</u> <u>N.J.A.C. 13:2-23.7(c)</u>	GAMB1	Failure to notify of placement of approved video game within 48 hours of placement	5	10	20		
N.J.A.C. 13:2-23.7(a)7	GAMB2	Raffling of sealed containers of alcoholic beverages without a permit	5	10	20		
...
N.J.A.C. 13:2-23.7(a)6	GAMB5	Unapproved video <u>device</u> [or slot machine or other gambling device] on the licensed premises	5	10	20		
...
<u>N.J.A.C. 13:2-23.7</u>	<u>GAMB7C</u>	<u>Non-criminal gambling activity on the licensed premises involving an employee</u>	10	20	30	Revocation	
<u>N.J.A.C. 13:2-23.7</u>	<u>GAMB7D</u>	<u>Non-criminal gambling activity on the licensed premises involving a licensee</u>	10	20	30	Revocation	

...
N.J.A.C. 13:2-23.6[(a)3](b)	NUIS1	Licensed business conducted in such a manner to become a nuisance (quality of life - noise, litter, urination, etc.)	10	20	30	
		Licensed business conducted in such a manner to become a nuisance (police intervention - public safety or rights being violated)	30	60	90	Revocation
...
N.J.A.C. 13:2-9.3	POSS	<u>Failure to maintain continuing possession and exclusive control of licensed premises</u>	<u>Indefinite suspension + 10 days</u>	<u>Indefinite suspension + 20 days</u>	<u>Indefinite suspension + 30 days</u>	Revocation
...
N.J.A.C. 13:2-20.4(a) and N.J.A.C. 13:2-20.3	TRANS	Transporting alcoholic beverages without proper documents	10	20	30	

13:2-19.12 Offers in compromise of suspension

(a) (No change)

(b) In cases being prosecuted by the Division, a licensee proposing that the Director accept an offer in compromise shall submit any such proposal to the Director, in writing, setting forth the reasons why the offer should be accepted. **The Director will not accept an offer in compromise in any case being prosecuted by the Division after an Initial Decision is issued by the Office of Administrative Law. However, if the license is transferred and the current licensee had no interest in the license at the time that the violations in question were charged, the current licensee may apply to the Director for relaxation of this regulation pursuant to N.J.A.C. 13:2-9.1.**

(c)- (d) (No change)

13:2-19.13 Increase or decrease of penalties

(a) - (d) (No change)

(e) In instances where a licensee fails to comply with a request for documents and/or testimony, the Director may indefinitely suspend the license until such time as the licensee complies, in addition to any other penalty for hindering an investigation.

13:2-20.5 Eligibility for transit insignia[, special transit insignia] or transportation license insignia

(a) No transit insignia[, special transit insignia] or transportation license insignia shall be issued:

1.- 3. (No change)

(b) No transit insignia [or special transit insignia] shall be issued for any solicitor's vehicle unless an agreement exists authorizing utilization of the solicitor's vehicle for purposes in furtherance of the business of the solicitor's employer.

13:2-20.6 Application; fees

(a) (No change)

[(b) Application for special transit insignia, which may be issued for passenger type vehicles and consists of a sticker that is less conspicuous than a transit insignia, shall be filed with the Director upon a prescribed form accompanied by the full fee of \$75.00 for each permit payable to the order of the Division of Alcoholic Beverage Control.]

[(c)] **(b)** (No change in text)

13:2-20.7 Term of transit insignia[, special transit insignia] or transportation license insignia; renewal

(a) All transit insignia [and special transit insignia] expire on August 31 following their issuance unless sooner terminated by order of the Director or by surrender or termination of the basic license under which the insignia was issued.

(b) (No change)

(c) (No change)

13:2-20.8 Location of transit insignia[, special transit insignia] or transportation license insignia

(a) (No change)

[(b) Special transit insignia must be directly affixed to the rearmost side window on the driver's side of the vehicle. The insignia shall be placed in the lower rear corner of such window, shall be affixed from the inside facing outward and shall be clearly visible at all times.]

[(c)] **(b)** Transportation license insignia shall be affixed to the [exterior of the] vehicle **body exterior on the left driver's side** of the vehicle **and shall be clearly visible at all times** in the same manner as a transit insignia or otherwise visibly displayed as may be determined by the Director.

13:2-21.4 Limited transportation permit

(a) (No change)

(b) Application for a limited transportation permit shall be made to the Division on a form prescribed by the Director accompanied by a fee of [\$750.00] **\$500.00**.

(c) - (e) (No change)

13:2-23.6 Prohibition against immoral activities; disturbance; nuisance on premises

(a) No licensee shall engage in or allow, permit or suffer [in or upon] **on or about** the licensed premises:

1. Any lewdness or immoral activity[;] **or**

2. Any brawl, act of violence, disturbance, or unnecessary noise[;].

[3. Nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance.]

(b) Every licensee shall operate its business in an orderly and lawful fashion, so as not to constitute a nuisance. A licensee's responsibility under this subsection includes the conduct of the licensee, its employees and patrons, if such conduct is contrary to the public health, safety and welfare.

13:2-23.7 Prohibition against lottery and gambling; exceptions

(a) No licensee shall engage in or allow, permit or suffer [in or upon] **on or about** the licensed premises:

1. - 3. (No change.)

4. Any slot machine or device in the nature of a slot machine **or any other gambling device** which may be used for the purpose of playing for money or other valuable thing;

5. [Nor shall any licensee possess, have custody of, or allow, permit or suffer in or upon the licensed premise any] Any gambling paraphernalia including, but not limited to, any slip, ticket, book, record, document, memorandum or other writing pertaining in any way to any lottery, pool-selling, bookmaking or unlawful game or gambling of any kind[.];

6. Any video device, which resembles a game of cards, dice, roulette, or any other game of chance or crane device, which device has not been approved by the Director. In approving a device, the Director must be satisfied that the specific device is an entertainment device and not a gambling device. In reaching this determination, the Director shall consider all factors relating to the operation of the

device, including, but not limited to, whether the device can easily be used for or adapted to gambling. A licensee wishing to place such a device on a licensed premises shall request written confirmation from the Director, prior to placement, that the specific device has been previously approved or, if the specific device has not been previously approved, shall request that the Director make such a determination. The approval letter shall be kept on the licensed premises at all times or the device may be deemed to be unapproved; or

7. Any raffle, drawing, lottery or contest, etc., the prize for which is an alcoholic beverage, without the appropriate permit.

(b) (No change)

(c) All licensees which have approved video games on their licensed premises shall notify the Division within 48 hours of the placement thereof.

13:2-23.13 Maintaining copies of current license certificate; application; list of employees [availability for inspection] on the licensed premises

(a) No licensee shall conduct the licensed business unless:

1. The current license certificate is at all times conspicuously displayed on the retail licensed premises in such plain view as to be easily read by all persons visiting such premises, with Permit for Off-Premises Storage of Business Records sticker affixed, if applicable;

2. (No change.)

3. A list, on a form prescribed by the Director, containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises. **A licensee shall be deemed to have complied with this requirement if this information is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced.**

(b) (No change)

[(c) A licensee shall be deemed to have complied with the requirements of (a)3 above if the information required to be kept on the licensed premises is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced at the request of anyone authorized in (b) above to request such information.]

13:2-23.28 [Responsibility of licensee for employee conduct] **Standard of liability**

(a) Unless otherwise specified by statute or rule, a licensee is guilty of a violation of the Alcoholic Beverage Control Act if it allows, permits or suffers the violative act on or about its licensed premises.

(b) When knowledge is required to establish a violation of the Alcoholic Beverage Control Act, knowledge is established if:

1. The licensee itself committed the violative act;

2. The licensee had actual knowledge or was on notice that the violative activity was taking place, or about to take place, on or about the licensed premises;

or

3. The licensee could have discovered violative activity was taking place, or about to take place, on or about the licensed premises through reasonable inquiry and had notice of circumstances which gave rise to a duty to inquire regarding same.

_____ (c) In disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant, employee or patron or the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given by him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings.

_____ (d) No licensee shall commit any act which gives rise to a violation which is chargeable against any other licensee. The licensee committing such violation may be administratively charged for same even if the other licensee is not charged.

_____ (e) The provisions of this section apply to all classes of alcoholic beverage licenses.

13:2-23.30 Prohibition against hindering an investigation

(a) - (b) (No change)

_____ (c) Every person identified in (a) above shall accept service of any subpoena issued by the Director. If service of a subpoena cannot be made due to the refusal of the licensee or any such person identified in (a) above to accept service of same, the licensee may be considered in violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30.

_____ (d) No licensee, permittee or any shareholder, partner or other person having an

interest in a license or permit shall refuse to submit to fingerprinting when so required by the Director or the local issuing authority.

(e) No licensee, permittee or any shareholder, partner or other person having an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself, herself or another person or entity), when so required by the Director or the local issuing authority.

13:2-23.32 [Books of account] Records to be maintained on the licensed premises; other required records

(a) Unless a licensee has obtained a permit for the off-premises storage of certain records, pursuant to N.J.A.C. 13:2-29.4, each licensee must keep and maintain the following documents and records on its licensed premises:

1. The current license certificate;
2. A copy of the current license application with any amendments filed, if applicable, together with a copy of the last long-form retail licensee application filed by the licensee;
3. A fully completed up-to-date list of all persons currently working on the licensed premises (commonly known as Form E-141-A);
4. The current Federal special tax stamp, or proof of proper filing for such annual stamp;

5. Copies of all delivery slips, invoices or similar documents for such transactions made within the past year;

6. Records of transactions with or placements by a registered display service;

7. New Jersey Sales Tax Certificate of Authority; and

8. Records set forth in (b) and (c) below.

[(a) All licensees shall have and keep, for an unlimited period of time, a permanent book or books of account in the English language which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments for an unlimited period of time.]

(b) All licensees shall maintain, for a period of five years, a record of all money or any other thing of value received in the ordinary course of business or received outside the ordinary course of business, **including, but not limited to, liquor sales, food sales, rebates, including payments from any Retail Incentive Program “RIPs”, and miscellaneous income.** [a record of all money expended from such receipts; the name of the person receiving such money and the purpose for which such expenditures were made.]

[(c) All books and records pertaining to investments, receipts or expenditures shall be made available for inspection, upon demand, by the Director and the other issuing authority or the Director's deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).]

(c) All licensees shall maintain, for a period of five years, records which show the payment of all expenses. The records shall indicate the name of the person or entity

receiving such payment, the amount of the payment and the reason that the payment was made. Payment records shall include payments made for:

1. The purchase of alcoholic beverages;

2. The purchase of food items;

3. The purchase of supplies and use of utilities;

4. The purchase or lease of equipment;

5. The payment of employees' compensation, including all required

withholding;

6. The payment of all local, state and federal taxes and license fees;

7. The payments of rents, mortgages, loans and/or a reduction of an owner's

equity; and

8. All other disbursements.

(d) All licensees shall produce the above-enumerated records for inspection immediately upon request by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p), unless a different time period is prescribed in N.J.A.C. 13:2-29.4, at a location designated by the requester. The failure to comply with this subsection shall be considered a violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30.

(e) All licensees shall have and keep, for an unlimited period of time, permanent records of account which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments for an unlimited period of time. Such documents may be stored on or off the licensed premises and shall be produced within seven days of a request from by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p) at a location designated by the requester.

(f) All records required to be maintained by a licensee shall be in the English language.

13:2-23.33 Dishonored checks; unpaid fees

(a) If a check submitted by a licensee, permittee or applicant is returned unpaid to the Division or other issuing authority or if all or any portion of any fee required is unpaid, the licensee, permittee or applicant shall be subject to disciplinary action or denial of current and future applications.

13:2-24.10 Advertising and consumer protection

(a) No manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that:

1. - 6. (No change.)

7. Is in violation of any other provisions of the Alcoholic Beverage Control

Act; or

[7.] **8.** (No change in text.)

13:2-29.4 Licensee records; storage systems and availability of records

(a) Upon written application to the Director [accompanied by all relevant specifications and descriptions, the Director, in the exercise of sound discretion, may approve alternate methods or locations for storage of any record required to be maintained by licensees], **the Director may, in the sound exercise of his or her discretion, issue a permit for the off-premises storage of the records listed in N.J.A.C. 13:2-23.32(a)5, (b) and (c) that are in excess of three months old,** [any record required to be maintained by licensees] provided that such [a record system] **storage** permits access to all required records so that they are "readily retrievable" and "accurate".

(b) Records are "readily retrievable" if when relating to a transaction from the date of request they are:

1. Not more than three months old and are produced for inspection immediately upon demand; **or**

[2. Not more than one year old but in excess of three months old, and are produced for inspection within two business days; or

[3] **2.** In excess of one year old] **In excess of three months old** and produced for inspection within seven business days.

(c) - (d) (No change.)

(e) A licensee may apply to the Director for a Permit for Off-Premises Storage of Business Records on a form prescribed by the Director. The permit term shall coincide with the license term. A separate permit shall be obtained for each license held by the licensee. The cost of this permit shall be \$100.00 per license for each license term.

13:2-29.5 Inspection by other governmental agencies

Nothing in this subchapter shall prohibit the Division, in its sole discretion, from providing to any governmental agency for inspection any document in the Division's possession.

13:2-34.2 License fees

There is a base license fee of \$[1,000] **1,250** which must be paid at the time of the initial application. This fee shall entitle the licensee to brew up to one thousand 31 fluid gallon barrels per year. There is an additional \$[500.00] **625.00** fee for every additional 1,000 barrels up to a 3,000 annual barrel limit. All fees shall be payable to the Division of Alcoholic Beverage Control.

13:2-35.5 Multiple barrooms; package goods sales restricted to the bona fide principal barroom

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in principal bona fide public barroom on the licensed premises. __

(b) Every holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall designate the principal public barroom on its sketch of the licensed premises. For current licensees, this requirement shall become effective upon the filing of the first renewal application after (the effective date of this subsection.) This designation shall be binding on the licensee, but not on the Division or other issuing authority.

SUBCHAPTER 44. DEFINITIONS

13:2-44.1 Definitions

(a) Unless otherwise defined in this Chapter, the definitions set forth in the Alcoholic Beverage Control Act, at N.J.S.A. 33:1-1, shall govern the meaning of terms in these rules.

(b) Definitions for purposes of this chapter are as follows:

1. "Alcoholic Beverage Control Act" means N.J.S.A. 33:1-1 et seq., and the rules promulgated thereunder, at N.J.A.C. 13:2.

2. "Employee" means a person who performs services in connection with the operation of the licensed business. The term "employee" includes people who are included on the payroll of the licensee, persons who perform services on or about the licensed premises pursuant to a contract (independent contractor) and who are not included on the licensee's payroll, and even people who are not paid for their work or services, including, but not limited to, family members who may be

temporarily operating the business while the owner is away from the premises.

3. "License" or "permit" are used interchangeably for disciplinary purposes. Thus, the use of either of these terms shall encompass the other.

4. "Proceeding" is any inspection or investigation conducted by the Division or any order to show cause, contested case or any other litigation in which the Division is a party related to matters involving the Alcoholic Beverage Control Act.